

## SUPREME COURT PENDING CASES

*The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.*

STATE *v.* ANTHONY COLLYMORE, SC 19868  
*Judicial District of Waterbury*

**Criminal; Whether Appellate Court Properly Held that State's Grant of Immunity did not Extend to Witnesses' Testimony when Called as Defense Witnesses; Whether First Time In-Court Identifications Violated Defendant's Due Process Rights.** The defendant was charged with several crimes in connection with a shooting death that occurred during an attempted robbery. Pursuant to General Statutes § 54-47a, the state granted immunity to three witnesses in exchange for their testimony at the defendant's trial. When the witnesses testified as prosecution witnesses, they repudiated their prior statements they had given before trial that inculpated the defendant, and they testified so as to exonerate him. The three witnesses reiterated their exculpatory testimony when the defendant cross-examined them. The trial court allowed the state to revoke the witnesses' immunity when they were called as defense witnesses, and each of the witnesses subsequently invoked his fifth amendment right to remain silent when questioned by defense counsel. The defendant was ultimately convicted of multiple felonies. He appealed, claiming that the trial court improperly allowed the state to revoke the immunity that it had granted to the witnesses when they were called to testify as defense witnesses. The Appellate Court (168 Conn. App. 847) disagreed and affirmed the defendant's conviction. It held that, while the state lacked the power to revoke the immunity it had granted to the three witnesses, the state's action here was best understood as a refusal to grant the witnesses *additional* immunity during the defendant's case-in-chief. The Appellate Court concluded that the state was not constitutionally required to grant additional immunity to the witnesses when they testified as defense witnesses because the defendant failed to show that the excluded testimony would not have been cumulative and that he had no other source to obtain that evidence. It also determined that the defendant failed to establish that any additional testimony the witnesses may have provided was essential to his defense. After the Appellate Court affirmed his conviction, the defendant filed a motion for reconsideration, claiming that *State v. Dickson*, 322 Conn. 410 (2016), which was released after oral argument before the Appellate Court in this case, established that his rights were violated when the victim's mother and brother identified him as the shooter for the first time during his trial. In *Dickson*, the Supreme Court concluded

that first time in-court identifications, like in-court identifications that are tainted by an unduly suggestive out-of-court identification, implicate due process protections and must be screened for admissibility by the trial court. The Appellate Court denied the motion for reconsideration. The defendant appeals, and the Supreme Court will decide whether the Appellate Court properly held that the state's grant of immunity to the three witnesses did not extend to their testimony when they were later called by the defendant and, if not, whether the error was harmless. The Supreme Court will also decide whether the in-court identification testimony made by the victim's mother and brother violated the defendant's due process rights and contravened *Dickson*.

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STATE *v.* VINCENTE AYALA, SC 19888  
*Judicial District of New Haven*

**Criminal; Whether Trial Court Properly Admitted Testimony Under Coconspirator Exception to Hearsay Rule; Whether Court Properly Admitted Testimony Regarding Murder Victim's State of Mind on Evening of Murder.** The state charged the defendant, a gang member, with murder and conspiracy to commit murder in connection with the shooting death of a fellow gang member, Thomas Mozell. At trial, the defendant filed a motion in limine, seeking to preclude another gang member, Jordan Richard, from testifying that the defendant shot Mozell. He maintained that the sole basis of Richard's knowledge of the incident was a conversation that he had with fellow gang member Steven White in which White informed him of the defendant's involvement in the murder. He argued that because Richard's testimony would not be based on his personal observations, it should be precluded as inadmissible hearsay evidence. The defendant further contended that Richard's testimony was not admissible under § 8-3 (1) (E) of the Connecticut Code of Evidence, which allows a coconspirator's statement to be admissible against a party. He explained that the state would not be able to establish, as required by § 8-3 (1) (E), that, at the time that White's statement was made, the conspiracy was ongoing and that the statement was made in furtherance of the conspiracy. He reasoned that White's statement was made days after the shooting and that White did not ask Richard to help advance or conceal the conspiracy. The trial court denied the motion and ruled that Richard's testimony was admissible pursuant to § 8-3 (1) (E), finding that the conspiracy was still in existence at the time the statement was made, given the closeness in time between when the shooting occurred and when the statement was made. The court

also found that the statement was made in furtherance of the conspiracy because the purpose of the statement was to discourage Richard from going to the police and revealing what he knew about the conspiracy. The defendant then filed a second motion in limine, seeking to preclude Tavaris Wylie from testifying that, on the evening of the murder, Mozell stated that he was afraid of the gang because he was involved in a dispute with his fellow gang members. The defendant claimed that the proposed testimony was inadmissible hearsay in that it was not based on Wylie's personal observations and that Mozell's general expression of fear was irrelevant because it was not specifically connected to the defendant. The court denied the second motion in limine, finding that the testimony satisfied the state of mind exception to the hearsay rule and that it was relevant to show that Mozell's relationship with the gang had been deteriorating. The defendant was convicted of murder and conspiracy to commit murder. The defendant appeals, and the Supreme Court will decide whether the trial court properly denied the his motions in limine.

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STATE *v.* TAUREN WILLIAMS-BEY, SC 19954  
*Judicial District of Hartford*

**Criminal; Juvenile Sentencing; Whether State Constitution Requires That All Juvenile Offenders Receive, at Sentencing, Consideration of Mitigating Factors of Youth; Whether, Where Sentencing Court did not Consider Mitigating Factors, Parole Eligibility Remedies Any Resulting State Constitutional Violation.** The defendant pleaded guilty in 2000 to a murder he committed when he was sixteen years old, and he was sentenced to a thirty-five year prison term without eligibility for parole. In *Miller v. Alabama*, 567 U.S. 460 (2012), the United States Supreme Court held that the eighth amendment to the federal constitution, which prohibits cruel and unusual punishment, forbids a trial court from sentencing a juvenile convicted of murder to mandatory life imprisonment without parole unless the court has considered youth related mitigating factors. In 2013, the defendant filed a motion to correct an illegal sentence, claiming that his sentence violated the eighth amendment as interpreted in *Miller* and article first, §§ 8 and 9, of the Connecticut constitution because his sentence failed to provide a meaningful opportunity for him to obtain release based on demonstrated maturity and rehabilitation. The trial court dismissed the motion to correct, concluding that because the defendant was not serving a sentence a life sentence, *Miller* was inapplicable, and the relief of resentencing that he sought exceeded the jurisdiction of the court. The defendant appealed and,

while the appeal was pending, the Connecticut legislature enacted P.A. 15-84, later codified as General Statutes § 54-125a (f), which provides for parole eligibility for juvenile offenders who, like the defendant, are serving a sentence of greater than ten years of incarceration. Next, in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the United States Supreme Court held that, under the federal constitution, a *Miller* violation could be remedied by affording a juvenile offender parole eligibility, rather than resentencing. The Appellate Court (167 Conn. App. 744 and 173 Conn. App. 64) rejected the defendant's claim that he should be resentenced, ruling that, even assuming that his sentence of thirty-five years without parole violated the eighth amendment, the federal constitutional violation was adequately remedied by the defendant's eligibility for parole and a parole hearing at which the mitigating factors of the defendant's youth could be considered. The Appellate Court also held that the Connecticut constitution did not require resentencing for juvenile offenders whose sentences violated *Miller* and who are, or will be, eligible for parole under § 54-125a (f). The defendant appeals, and the Supreme Court will decide whether the Connecticut constitution requires that *all* juvenile offenders—and not just those sentenced to life imprisonment without the possibility of release—are entitled to a sentencing proceeding at which the sentencing court expressly considers the mitigating factors of youth identified in *Miller*. The Supreme Court will also decide whether, assuming that the state constitution entitles all juvenile offenders to consideration of *Miller* factors at sentencing, the availability of parole eligibility under § 54-125a (f) adequately remedies the state constitutional violation.

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C. ANDREW RILEY *v.* THE TRAVELERS HOME AND  
MARINE INSURANCE COMPANY, SC 19968  
*Judicial District of Hartford*

**Whether, by Presenting Evidence After Court Reserved Ruling on its Motion for Directed Verdict, Defendant Waived Right to Claim that Trial Court was Limited to Considering Evidence Adduced in Plaintiff's Case-In-Chief When it Ruled on Motion.** In 2009, a fire destroyed a significant portion of the plaintiff's house in Pomfret. The defendant is the plaintiff's homeowners insurer, and, after conducting its own investigation into the cause of the fire, the defendant denied the plaintiff's claim for insurance coverage on the basis of its determination that the plaintiff had intentionally caused the fire. The plaintiff then brought this action, alleging that the defendant was liable for breach of contract and negligent infliction of emotional distress. He alleged as to his emotional distress claim that the

defendant was negligent in failing to conduct a reasonable investigation into the cause of the fire. The case was tried to a jury, and, at the conclusion of the plaintiff's case-in-chief, the defendant moved for a directed verdict on the emotional distress claim, arguing that the plaintiff had introduced no evidence to show that the defendant's investigation of the fire had been unreasonable or inadequate. The trial court reserved judgment on the motion, and the defendant proceeded to introduce its own evidence as to that claim. The jury subsequently returned a verdict in favor of the plaintiff on both his breach of contract and emotional distress claims and awarded him \$1 million in damages for negligent infliction of emotional distress. The trial court subsequently denied the defendant's motion for judgment notwithstanding the verdict, in which the defendant renewed its previous motion for a directed verdict as to the emotional distress claim. The defendant appealed, claiming that the evidence was insufficient to support the jury's verdict in favor of the plaintiff on the emotional distress claim. It argued that the trial court was confined to the evidence adduced during the plaintiff's case-in-chief when considering its motions for a directed verdict and for judgment notwithstanding the verdict. The Appellate Court (173 Conn. App. 422) disagreed, concluding that, by electing to introduce its own evidence after the trial court deferred ruling on the motion for a directed verdict, the defendant had waived the right to claim that the plaintiff had not carried his burden of production on his emotional distress claim in his case-in-chief. It reasoned that the defendant was bound by the choice it made to present evidence on its claim that the plaintiff intentionally set fire to his house and that it assumed the risk that the evidence it presented would have the effect of underscoring the inadequacies of its investigation of the fire. The defendant appeals, and the Supreme Court will determine whether the Appellate Court correctly held that, by not resting at the end of the plaintiff's case-in-chief, but instead putting on evidence, the defendant waived its right to claim on appeal that the trial court was confined to the evidence adduced during the plaintiff's case-in-chief when ruling on the defendant's motion for a directed verdict on the negligent infliction of emotional distress claim.

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STATE *v.* ROBERT JOHN PURCELL, SC 19980  
*Judicial District of New Haven*

**Criminal; Whether Defendant Unambiguously Invoked his Right to Counsel During Custodial Interrogation; Whether State Constitution Requires Police to Stop Interrogation to Clarify an Ambiguous or Equivocal Request for Counsel.** Parents complained to the police that the defendant had been engaging in sexually

inappropriate conduct with their child. The defendant agreed to come to the police station to discuss the complaint, but he was unaware of the nature of the allegations against him prior to arriving. After the police told the defendant of the nature of the allegations and advised him of his constitutional rights, the defendant told them that his attorney had advised him not to talk to them about any matters pertaining to the allegations. He expressed misgivings about his attorney's advice and continued talking with the officers. He thereafter stated that: "See, if my lawyer was here, I'd, then I'd . . . we could talk. That's, you know, that's it;" and "I'm supposed to have my lawyer here. You know that." The defendant was subsequently convicted of risk of injury to a child, and he appealed, claiming that the trial court wrongly denied his motion to suppress statements he gave to the police during the custodial interrogation. He claimed that the police violated his federal and state constitutional rights when they failed to stop questioning him after he invoked his right to counsel. The defendant further claimed that even if his invocation of his right to speak to an attorney was somehow ambiguous or equivocal, the police were nonetheless required under the Connecticut constitution to stop questioning him and to clarify whether he was indeed invoking his right to counsel. The Appellate Court (174 Conn. App. 401) disagreed and affirmed the defendant's conviction, holding that the police were not required to stop questioning the defendant because, under the circumstances here, a reasonable police officer would not have understood the defendant's statements as a clear and unequivocal request for counsel. The Appellate Court further held that our state constitution does not provide greater protection than the federal constitution by requiring that the police ceased questioning the defendant to clarify any ambiguous or equivocal references to counsel he made during the interrogation. The defendant appeals, and the Supreme Court will decide whether the Appellate Court properly determined that the defendant did not clearly and unambiguously invoke his right to counsel and that our state constitution does not require that police stop and clarify an ambiguous or equivocal request to consult with an attorney and to have counsel present during a police interrogation.

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ENRICO MANGIAFICO *v.* TOWN OF FARMINGTON et al., SC 19993  
*Judicial District of Hartford*

**Administrative Appeals; Whether Trial Court Properly Dismissed Federal Civil Rights Claim for Lack of Jurisdiction Because Plaintiff Failed to Exhaust his Administrative Remedies.** The town of Farmington added the plaintiff's property to its

blighted property list after the plaintiff's neighbors complained about the property's appearance. The town issued citations, imposed daily fines against the plaintiff, and placed liens on his property when he failed to pay the fines. While the plaintiff requested and received hearings under the town code to challenge his liability, he did not timely appeal the hearing officer's determination on the citation assessments as required by the town code and by General Statutes § 7-152c (g), which establishes the procedure by which a party may appeal a municipal assessment to the trial court. The plaintiff thereafter brought this action against the town and its officials, alleging, among other things, that the defendants' conduct violated his civil rights under the federal constitution. The trial court dismissed the plaintiff's federal civil rights claim on finding that the plaintiff had failed to exhaust his administrative remedies by appealing the hearing officer's determination under the town code and § 7-152c (g). The plaintiff appealed to the Appellate Court (173 Conn. App. 158), which affirmed the trial court's judgment, rejecting the plaintiff's claim that he did not have to exhaust his administrative remedies in order to bring a federal civil rights claim in state court. The Appellate Court also rejected the plaintiff's claim that he did not have to exhaust the administrative remedy provided under the town code and § 7-152c (g) because pursuit of the administrative remedy would have proved inadequate, futile, and burdensome. It noted that the assessment appeal process was simple and direct and that the plaintiff would have received a de novo hearing before the trial court, which could have provided adequate relief had it agreed with the plaintiff's claims. The Supreme Court granted the plaintiff certification to appeal, and it will decide whether the Appellate Court properly concluded that the trial court lacked subject matter jurisdiction to entertain the plaintiff's federal civil rights claim due to the plaintiff's failure to exhaust his administrative remedies.

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DEUTSCHE BANK AG *v.* SEBASTIAN HOLDINGS, INC., et al.,  
SC 20037/20038

*Judicial District of Stamford-Norwalk*

**Corporations; Foreign Judgments; Whether Claim that Corporate Veil Should be Pierced Barred by Res Judicata; Whether Individual Defendant Collaterally Estopped From Relitigating**

**Issue of his Personal Liability for Judgment Rendered Against Corporation.** The plaintiff brought a lawsuit in England claiming that Sebastian Holding, Inc. (the corporation) owed it money in connection with trading losses that the corporation incurred in relation to accounts that it had opened and operated through the plaintiff. The corporation counterclaimed, claiming that the plaintiff's breach of its contractual duties resulted in the depletion of funds that the corporation could have used to mitigate its losses. The English court denied the counterclaim and rendered judgment for the plaintiff, awarding it \$243,023,089 plus interest. In subsequent postjudgment proceeding, the English court also granted the plaintiff's application for nonparty costs, finding that the corporation's sole shareholder and director, Alexander Vik, was personally liable for some of the plaintiff's litigation costs due to his extensive involvement in the litigation. The plaintiff subsequently brought this Connecticut action seeking that the corporate veil be pierced and that Vik be held personally liable for the English judgment. The defendants moved for summary judgment, arguing that the plaintiff's corporate veil piercing claim was barred by *res judicata* because it could have been raised in the English action. The plaintiff also moved for summary judgment, claiming that Vik was collaterally estopped from denying that he is the alter ego of the corporation and personally liable for the judgment because all questions of material fact with respect to that matter had been decided by the English court in the postjudgment proceeding on the plaintiff's application for nonparty costs. The trial court denied the motions for summary judgment, and both the plaintiff and the defendants filed interlocutory appeals. The Appellate Court (174 Conn. App. 573) affirmed the trial court's judgment, ruling that the action is not barred by *res judicata* because the claims raised by the plaintiff here are distinct from those that were litigated in the English action, as the plaintiff is not seeking to relitigate a contractual liability claim that previously had been decided in the English action. The Appellate Court further held that the defendants were not collaterally estopped from litigating the issue of whether Vik was the alter ego of the corporation because, while the English court made factual findings relating to Vik's dominion and control of the corporation, the postjudgment proceeding concerning Vik's liability for costs was a summary proceeding that did not afford the parties basic procedural safeguards, including the presentation and cross-examination of witnesses. Both the plaintiff and the defendants now appeal from the Appellate Court, and the Supreme Court will decide whether the Appellate Court properly determined that the action is not barred by the doctrine of *res judicata* and that Vik is not collaterally



estopped from denying that he is the alter ego of the corporation and therefore personally liable for the English judgment.

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JOSHUA CLARK et al. v. MIDDLESEX CORPORATION et al., SC 20085  
*Compensation Review Board*

**Workers' Compensation; Whether Deceased Worker's Child Eligible for § 31-306 Survivor's Benefits Where Child Conceived After Date of Worker's Injury.** Joshua Clark (the decedent) was seriously injured while working for Middlesex Corporation, and he died approximately fourteen months later. At the time of his death, the decedent's girlfriend (the claimant) was pregnant with his child, and the child was born several months after the decedent died. The claimant sought worker's compensation survivor's benefits on behalf of herself and on behalf of the child pursuant to General Statutes § 31-306, which provides that benefits "shall be paid to dependents on account of death resulting from an accident arising out of and in the course of employment . . . [t]o those wholly dependent upon the deceased employee at the date of the deceased employee's injury . . . ." The trial commissioner ruled that, while the claimant was entitled to survivor's benefits, the child was not, finding that, because the child did not exist at the date of the decedent's injury, the child was not the decedent's dependent when the decedent was injured as contemplated by § 31-306. The claimant appealed to the Compensation Review Board, arguing that the trial commissioner's interpretation of § 31-306 was inconsistent with the humanitarian purpose of the Workers' Compensation Act. She maintained that a deceased worker's child should be deemed a dependent under § 31-306 even if the child was not conceived at the time that the worker was injured. The Compensation Review Board disagreed, finding that a person who is not a dependent at the time of a worker's injury cannot later recover dependency benefits when the worker dies as a result of the injury. It opined that, in order to be deemed a dependent for purposes of § 31-306, a child must have been conceived on or before the date of the worker's injury. The Compensation Review Board concluded that, because the child was not conceived until after the decedent was injured, the child was not the decedent's dependent and was not entitled to survivor's benefits. The claimant appeals, and the Supreme Court will determine whether a child that was conceived after a worker's injury and born after the worker's death is eligible for survivor's benefits pursuant to § 31-306.

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***The following appeal is pending on the Supreme Court's docket and is in the process of being briefed.***

EDITH R. JEMIOLA, TRUSTEE OF THE EDITH R. JEMIOLA  
LIVING TRUST *v.* HARTFORD CASUALTY INSURANCE  
COMPANY, SC 19978  
*Judicial District of Tolland*

**Insurance; Whether Extensive Pattern Cracking to Plaintiff's Basement Walls Constituted a "Collapse" as Defined by Plaintiff's Homeowners Insurance Policy.** This is one of several cases involving claims of extensive pattern cracking in basement walls of Tolland County homes caused by a chemical compound in the concrete used to construct the foundations of homes. The plaintiff brought this action claiming that the defendant insurance company breached the homeowners insurance policy in denying coverage for the pattern cracking of her basement walls. The plaintiff alleged that the cracking resulted in the substantial impairment of the structural integrity of the foundation that constituted a "collapse" as contemplated by the homeowners policy. The policy provided coverage for the "collapse" of a building, and defined "collapse" as "an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose." The trial court granted the defendant's motion for summary judgment, finding that the insurance policy's definition of "collapse" was unambiguous and that there was no genuine issue of material fact that the plaintiff's loss was not covered because there had been no sudden or abrupt falling down or caving in of the basement walls of the plaintiff's home. The court noted that, while experts had testified that the plaintiff's foundation would eventually give way, that had not happened yet, and that the plaintiff's home and basement were still habitable and could still be "occupied for its current intended purpose." The plaintiff appeals, and the Supreme Court will determine whether the trial court properly ruled that the definition of "collapse" in the insurance policy unambiguously excluded coverage for the damage suffered to the plaintiff's basement walls.

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*The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.*

*John DeMeo*  
*Chief Staff Attorney*

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